

Minimum Participation Requirements

Supplemental reading: IRC sections 401(a)(26) and 410(a)
Treasury regulation 1.401(a)(26)

- Minimum participation standards (IRC section 410(a))
 - A plan can exclude employees from participating in a plan if they satisfy any of the following requirements.
 - Less than one year of service (can exclude employees with one year but less than two years of service if the plan provides for 100% immediate vesting)
 - Under age 21
 - Entry into the plan must be no later than the earlier of 6 months after satisfying the eligibility requirements or the first day of the next plan year.
- Additional participation requirements (IRC section 401(a)(26))
 - Only applies to defined benefit plans.
 - Total participants benefiting in a plan (see section of outline dealing with IRC section 410(b) for definition of benefiting) must equal at least the smaller of:
 - 50 employees, or
 - 40% of all non-excludable employees.
 - If the employer has 2 or 3 employees, at least 2 employees must participate in the plan; if only 1 employee, then that employee must participate.
 - A non-excludable employee is one not excluded under the terms of the plan for IRC section 410(a) statutory reasons (non-resident aliens who receive no earned income from United States sources or employees covered by a collective bargaining agreement are excludable). Terminated participants who work 500 or fewer hours are deemed to be excludable, unless they benefit for the year. Note that if a terminated participant is re-employed in the same year, they are no longer excludable, regardless of hours worked. In addition, if an active participant works 500 or fewer hours, they are still deemed to be non-excludable, even if they are not benefiting.

- All employers in a controlled group or an affiliated service group are considered to be one employer for purposes of the eligible employee count.
- Plans benefiting employees from qualified separate lines of business (QSLOB) under IRC section 414(r) may satisfy the minimum participation rules by treating each separate line of business as a separate employer (not part of a controlled group).
- Plans may not be aggregated to satisfy the minimum participation requirement.
- Plans benefiting only NHCEs automatically satisfy the minimum participation rules.
- Multiemployer plans covering collectively bargained employees are deemed to satisfy IRC section 401(a)(26). If the multiemployer plan covers employees not covered by a collective bargaining agreement, that portion of the plan must satisfy IRC section 401(a)(26). The collectively bargained employees can be included with the non-collectively bargained employees in order to satisfy IRC section 401(a)(26) if the plan sponsor elects to do so.
- A frozen defined benefit plan satisfies IRC section 401(a)(26) if it provides a meaningful prior benefit structure (a subjective test).
- A plan must generally satisfy IRC section 401(a)(26) on each day of the plan year. However, it can be treated as satisfying the requirements on each day if it satisfies them on one day that is deemed to be reasonably representative of what the results would be on any other day. The plan does not have to be tested on the same day each year.

Question 60

Number of plan participants in defined benefit plans A, B, and C as of 1/1/2012:

	<u>Plan A</u>	<u>Plan B</u>	<u>Plan C</u>
Highly compensated employees	10	25	0
Non-highly compensated employees	35	0	10

Number of non-excludable employees as of 1/1/2012:

Highly compensated employees:	25
Non-highly compensated employees:	35

All plans are sponsored by the same employer. The employer does not maintain any separate lines of business.

Which of the plans, if any, satisfy the minimum participation rules of IRC section 401(a)(26)?

Solution to question 60

There are a total of 60 non-excludable employees of the employer. In general, each defined benefit plan must cover at least the smaller of 50 participants, or 40% of the non-excludable employees, which is 24 participants. So, at least 24 participants must be covered in each plan. One exception to that rule is that if the plan covers only non-highly compensated participants, then the plan automatically satisfies the minimum participation rules.

Plans A and B each cover at least 24 participants, and Plan C covers only non-highly compensated employees. Therefore, all three plans pass the minimum participation test.

Note that it must be assumed that all plan participants are benefiting.